

AMENDED IN SENATE APRIL 14, 2005

**SENATE BILL**

**No. 321**

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**Introduced by Senator Morrow**

February 16, 2005

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An act to amend Section 66001 of the Government Code, relating to development fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Morrow. Development: fees.

Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined. Existing law provides that in specified actions imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between, among other things, the fee's use and the type of development project on which the fee is imposed or the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

This bill would, ~~instead, require~~ *provide that the these requirements apply in any action establishing, increasing, or imposing a fee by a local agency determine how there is a rough proportionality between the fee's use and the type of development project on which the fee is imposed or the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed as a condition of approval of a development project and would place the burden on the local agency of producing evidence to establish that the fee does not exceed the cost of the public facility, service, or regulatory activity, except as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a ~~rough proportionality~~ *reasonable relationship* between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a ~~rough proportionality~~ *reasonable relationship* between the need for the public facility and the type of development project on which the fee is imposed.

(b) ~~In any action~~ (1) *In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a rough proportionality reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.*

(2) *The local agency has the burden of producing evidence to establish that the fee does not exceed the cost of the public facility, service, or regulatory activity prior to establishing, increasing, or imposing the fee. This paragraph shall not apply to school districts as defined in Section 41302.5 of the Education Code.*

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that

1 portion of the account or fund remaining unexpended, whether  
2 committed or uncommitted:

3 (1) Identify the purpose to which the fee is to be put.

4 (2) Demonstrate a ~~rough proportionality~~ *reasonable*  
5 *relationship* between the fee and the purpose for which it is  
6 charged.

7 (3) Identify all sources and amounts of funding anticipated to  
8 complete financing in incomplete improvements identified in  
9 paragraph (2) of subdivision (a).

10 (4) Designate the approximate dates on which the funding  
11 referred to in paragraph (3) is expected to be deposited into the  
12 appropriate account or fund.

13 When findings are required by this subdivision, they shall be  
14 made in connection with the public information required by  
15 subdivision (b) of Section 66006. The findings required by this  
16 subdivision need only be made for moneys in possession of the  
17 local agency, and need not be made with respect to letters of  
18 credit, bonds, or other instruments taken to secure payment of the  
19 fee at a future date. If the findings are not made as required by  
20 this subdivision, the local agency shall refund the moneys in the  
21 account or fund as provided in subdivision (e).

22 (e) Except as provided in subdivision (f), when sufficient  
23 funds have been collected, as determined pursuant to  
24 subparagraph (F) of paragraph (1) of subdivision (b) of Section  
25 66006, to complete financing on incomplete public  
26 improvements identified in paragraph (2) of subdivision (a), and  
27 the public improvements remain incomplete, the local agency  
28 shall identify, within 180 days of the determination that sufficient  
29 funds have been collected, an approximate date by which the  
30 construction of the public improvement will be commenced, or  
31 shall refund to the then current record owner or owners of the  
32 lots or units, as identified on the last equalized assessment roll, of  
33 the development project or projects on a prorated basis, the  
34 unexpended portion of the fee, and any interest accrued thereon.  
35 By means consistent with the intent of this section, a local  
36 agency may refund the unexpended revenues by direct payment,  
37 by providing a temporary suspension of fees, or by any other  
38 reasonable means. The determination by the governing body of  
39 the local agency of the means by which those revenues are to be  
40 refunded is a legislative act.

1 (f) If the administrative costs of refunding unexpended  
2 revenues pursuant to subdivision (e) exceed the amount to be  
3 refunded, the local agency, after a public hearing, notice of which  
4 has been published pursuant to Section 6061 and posted in three  
5 prominent places within the area of the development project, may  
6 determine that the revenues shall be allocated for some other  
7 purpose for which fees are collected subject to this chapter and  
8 which serves the project on which the fee was originally  
9 imposed.

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